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FILED

05-912 JAN 18 2006

No. **OFFICE OF THE CLERK**

*In the Supreme Court of the United States*

ESTATE OF MARY LOWE, BY ROBERT F. HARRIS,  
COOK COUNTY PUBLIC GUARDIAN AND  
SUPERVISED ADMINISTRATOR,

*Petitioner,*

v.

APEX TAX INVESTMENTS, INC. AND JOHN HERNDON,  
*Respondents.*

*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF ILLINOIS*

**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether, when mailed notice of a tax sale or property forfeiture is returned undelivered, the Due Process Clause of the Fourteenth Amendment requires the person charged with giving notice to make any additional effort to locate the homeowner before the property is taken?<sup>1</sup>

2. Whether, when the undelivered, returned notice either reveals the homeowner's actual whereabouts or contains information, such as the fact of her hospitalization, that is reasonably likely to lead to the discovery of her whereabouts and mental incapacity, the Due Process Clause permits the property to be taken without requiring the party responsible for giving notice to undertake reasonable additional efforts to provide actual notice?

3. Whether a finding of "due diligence," made as a matter of state law in an *ex parte* proceeding, forecloses a party who did not receive actual notice of the proceeding from challenging the sufficiency, on federal constitutional grounds, of efforts to discover her whereabouts?

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<sup>1</sup> The first question presented for review is substantially the same as the question presented in *Jones v. Flowers*, No. 04-1477, pet. for cert. granted, Sept. 27, 2005.

## **PARTIES TO THE PROCEEDING**

Petitioner is the Estate of Mary Lowe, by Robert F. Harris, Cook County Public Guardian and Supervised Administrator of the Estate of Mary Lowe. Respondents are Apex Tax Investments, Inc. and John Herndon.

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The Estate of Mary Lowe by Robert F. Harris, Cook County Public Guardian and Supervised Administrator, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Illinois in this case.

**OPINIONS BELOW**

The opinion of the Supreme Court of Illinois (Pet. App. 1a-43a) is reported as *In re Application of County Collector*, 217 Ill. 2d 1, 838 N.E.2d 907 (2005). The order of the Appellate Court of Illinois, First Judicial District, affirming the Circuit Court of Cook County's denial of the petition to set aside tax deed (Pet. App. 44a-62a) is unpublished pursuant to Illinois Supreme Court Rule 23. The memorandum opinion of the Circuit Court of Cook County granting partial summary judgment in favor of petitioner



(Pet. App. 82a-87a) is not reported. The orders of the Circuit Court of Cook County denying petitioner's motion for summary judgment (Pet. App. 81a) and denying the petition to set aside tax deed (Pet. App. 63a) are not reported. The order of the Circuit Court of Cook issuing the tax deed is not reported (Pet. App. 88a-90a).

### **JURISDICTION**

The judgment of the Supreme Court of Illinois was entered on October 20, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. Const. Amend. XIV, § 1 provides in relevant part:

No State shall ... deprive any person of life, liberty, or property, without due process of law.

Section 22-15 of the Illinois Property Tax Code, 35 Ill. Comp. Stat. 200/22-15, provides in relevant part:

The purchaser or his or her assignee shall give the notice required by § 22-10 by causing it to be published in a newspaper as set forth in § 22-20. In addition, the notice shall be served by a sheriff ... upon owners who reside on any part of the property sold by leaving a copy of the notice with those owners personally.

The same form of notice shall also be served upon all other owners and parties interested in the property, if upon diligent inquiry they can be found in the county,

and upon the occupants of the property in the following manner:

(a) as to individuals, by (1) leaving a copy of the notice with the person personally or (2) by leaving a copy at his or her usual place of residence with a person of the family, of the age of 13 years or more, and informing that person of its contents. The person making the service shall also cause a copy of the notice to be sent by registered or certified mail, return receipt requested, to that party at his or her usual place of residence.

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If any owner or party interested, upon diligent inquiry and effort, cannot be found or served with notice in the county as provided in this Section, and the person in actual occupancy and possession is tenant to, or in possession under the owners or the parties interested in the property, then service of notice upon the tenant, occupant or person in possession shall be deemed service upon the owners or parties interested.

If any owner or party interested, upon diligent inquiry and effort cannot be found or served with notice in the county, then the person making the service shall cause a copy of the notice to be sent by registered or certified mail, return receipt requested, to that party at his or her residence, if ascertainable.

Section 22-45 of the Illinois Property Tax Code, 35 Ill. Comp. Stat. 200/22-45, provides in relevant part:

Tax deeds issued under § 22-35 are incontestable except by appeal from the order directing the county

clerk to issue the tax deed. However, relief from such order may be had under § 2-1401 of the Code of Civil Procedure in the same manner and to the same extent as may be had under that Section with respect to final orders and judgments in other proceedings. The grounds for relief under § 2-1401 shall be limited to:...

(3) proof by clear and convincing evidence that the tax deed had been procured by fraud or deception by the tax purchaser or his or her assignee; or

(4) proof by a person or party holding a recorded ownership or other recorded interest in the property that he or she was not named as a party in the publication notice as set forth in § 22-20, and that the tax purchaser or his or her assignee did not make a diligent inquiry and effort to serve that person or party with the notices required by §§ 22-10 through 22-30.

Section 22-40(a) of the Illinois Property Tax Code, 35 Ill. Comp. Stat. 200/22-40(a), provides in relevant part:

If the redemption period expires and the property has not been redeemed ... and all the notices required by law have been given ... and the petitioner has complied with all the provisions of law entitling him or her to a deed, the court shall so find and shall enter an order directing the county clerk ... to issue to the purchaser or his or her assignee a tax deed. The court shall insist on strict compliance with §§ 22-10 through 22-25.

## STATEMENT

### Background

In 1977, Mary Lowe purchased a single-family home in Cook County, Illinois, located at 13250 South Riverdale. (C 56.)<sup>2</sup> She regularly paid all property taxes until 1991, when she failed to pay \$110.65 in property taxes assessed for the 1991 property tax year. (C 4.) In 1993, Ms. Lowe quitclaimed the property to herself and her companion, William Austin. (EX 66-67.)

Beginning in the early 1960s, Ms. Lowe experienced psychiatric problems, including auditory hallucinations and delusional thinking. (SR II 26.) Ms. Lowe was diagnosed with chronic disorganized schizophrenic disorder and hospitalized 27 times between 1964 and 1996. (SR II 25-26.) Her final hospitalization lasted 16 months, from August 26, 1995 until December 16, 1996. (SR II 26, 32; EX 96, 131.) It was during that period that respondent Apex Tax Investments, Inc. ("Apex") secured ownership of Ms. Lowe's home by prosecuting an application for issuance of a tax deed in the Circuit Court of Cook County. (Pet. App. 88a-90a.) Ms. Lowe, who was released to the custody of her son, Bruce Lowe, on December 16, 1996, never received notice of the tax deed proceeding. (SR II 26, 32; EX 96, 131.) She died on November 15, 1998, two days after her 72nd birthday. (C 57, 451.)

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<sup>2</sup> The record consists of 10 volumes: a four-volume record consisting of a consecutively-paginated three-volume common-law record ("C") and a one-volume report of proceedings ("R"); a three-volume supplemental record containing a one-volume common-law record ("SR") and a nonconsecutively-paginated two-volume report of proceedings ("SRII" and "SRIII"); and a consecutively-paginated three-volume supplemental record containing the exhibits admitted in evidence at the evidentiary hearing of February 20, 2002 ("EX").